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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/593,774

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Alain Foucault

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04/15/2008

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EXAMINER

THERKORN, ERNEST G

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/593,774

**Applicant(s)**

FOUCAULT ET AL.

**Examiner**

Ernest G. Therborn

**Art Unit**

1797

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 3/1/07 & 9/22/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date 9/22/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 102(B) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over either Nunogaki (U.S. Patent No. 4,877,523) or Murayama (Journal of Chromatography, 239 (1982), pages 643-649). The claims are considered to read on each of Nunogaki (U.S. Patent No. 4,877,523) and Murayama (Journal of Chromatography, 239 (1982), pages 643-649). However, if a difference exists between the claims and either Nunogaki (U.S. Patent No. 4,877,523) or Murayama (Journal of Chromatography, 239 (1982), pages 643-649), it would reside in optimizing the steps of either Nunogaki (U.S. Patent No. 4,877,523) or Murayama (Journal of Chromatography, 239 (1982), pages 643-649). It would have been obvious to optimize the steps of each of Nunogaki (U.S. Patent No. 4,877,523) and Murayama (Journal of Chromatography, 239 (1982), pages 643-649) to enhance separation.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Nunogaki (U.S. Patent No. 4,877,523) or Murayama (Journal of Chromatography, 239 (1982), pages 643-649) in view of GEPEA Resultants 2001 Internet Article, Online

2 March 2003, pages 1-7 and Google Translation of the first three full paragraphs of page 5 of GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7. GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 and Google Translation of the first three full paragraphs of page 5 of GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 are considered to be a single reference. At best, the claims differ from either Nunogaki (U.S. Patent No. 4,877,523) or Murayama (Journal of Chromatography, 239 (1982), pages 643-649) in reciting varying the size. GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 and Google Translation of the first three full paragraphs of page 5 of GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 discloses changing cell size allows for varying the volume the device handles. It would have been obvious to vary the size of the cell in either Nunogaki (U.S. Patent No. 4,877,523) or Murayama (Journal of Chromatography, 239 (1982), pages 643-649) because GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 and Google Translation of the first three full paragraphs of page 5 of GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 are considered to be a single reference.

Any inquiry concerning this communication should be directed to E. Therkorn at telephone number (571) 272-1149. The official fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Ernest G. Therkorn/  
**Ernest G. Therkorn**  
**Primary Examiner**  
**Art Unit 1797**

EGT  
April 11, 2008